

DIRECTOR'S OFFICE
DEPT. OF
TRANSPORTATION

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DEPARTMENT OF TRANSPORTATION

Amendment and Compilation of Chapter 19-16.1
Hawaii Administrative Rules
October 27, 2000

SUMMARY

1. §§19-16.1-3, 19-16.1-4 and 19-16.1-9 are amended.
2. Chapter 19-16.1 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 19

DEPARTMENT OF TRANSPORTATION

SUBTITLE 2

AIRPORTS DIVISION

CHAPTER 16.1

AIRPORTS SYSTEM FEES AND CHARGES
APPLICABLE TO NON-SIGNATORY CARRIERS

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§19-16.1-1 Definitions. Unless the context clearly indicates otherwise, as used in this chapter:

"Airfield activity center" means the airfield areas of all airports in the airports system, including, but not limited to, the runways, taxiways, aprons, aircraft parking areas, security fencing, secure service roadways, aircraft rescue and crash fire stations, and related areas and facilities.

"Airports system" means the state-wide system of airports including all airports, air navigation facilities, and other related facilities and properties (real, personal, or mixed), and any rights or interests in airports, air navigation facilities, and other related

facilities and related properties, now or hereafter belonging to or controlled by the State or under the administration, jurisdiction, control, and management of the State, and all equipment, improvements, extensions, or betterments thereto hereafter constructed or acquired.

"Airports system landing fee" means the fee imposed by the department per one thousand pounds of approved maximum landed weight for landing of aircraft at an airport in the airports system.

"Airports system terminal plan" means that document which identifies the commuter terminal, the overseas terminal, the interisland terminal and the international arrivals area, at HIA on file in the office of the director.

"Airports system support charge" means the charge imposed by the department per one thousand pounds of approved maximum landed weight to recover residual costs of the airports system.

"Approved maximum landed weight" means the maximum landed weight for an aircraft as authorized in the aircraft flight manual by the Federal Aviation Administration. If an aircraft is registered in a foreign country and has not been certified by the Federal Aviation Administration, the approved maximum landed weight shall be the maximum landed weight authorized by the foreign country.

"Aviation fuel taxes" means the taxes established by section 243-4(a)(2), Hawaii Revised Statutes.

"Department" means the department of transportation of the State.

"Director" means the director of the department.

"Distributor" means and includes:

- (1) Every person who refines, manufactures, produces, or compounds liquid fuel and sells it within the State;
- (2) Every person who imports or causes to be imported into the State any liquid fuel and sells it therein, whether in the original packages or containers in which it is imported or otherwise than in such original packages or containers, or who imports any such fuel for the person's own use in the State;
- (3) Every person who acquires liquid fuel from a non-licensed distributor and who sells or uses it, whether in the original package or container in which it was imported (if imported), or otherwise than in such original packages or containers; and

- (4) Every person who acquires liquid fuel from a licensed distributor as a wholesaler thereof and sells or uses it; and
- (5) Every person referred as a "distributor" in chapter 243, Hawaii Revised Statutes.

"Honolulu International Airport" or "HIA" means the real property including all buildings, structures, facilities, and other betterments constituting Honolulu International Airport, or as Honolulu International Airport may hereafter modified or expanded.

"Interisland landing" means any landing by an aircraft whose flight originated at an airport in the State.

"Interisland terminal" means that area of HIA identified as such in the airports system terminal plan as amended from time to time.

"International arrivals area" means that area of HIA identified as such in the airports system terminal plan as amended from time to time.

"Joint use area" means all baggage claim, hold room, baggage makeup, baggage break-down, tug drive, and any other space available for shared use by aircraft operators in airports system terminal buildings as identified as such in the airports system terminal plan as amended from time to time.

"Landing" means any landing by an aircraft at an airport in the airports system, including passenger landings, cargo landings, interisland landings, and overseas landings, provided, however, landing shall not include a landing by an aircraft that returns to an airport in the airports system because of weather, mechanical, emergency, or precautionary reasons.

"Non-signatory carrier" means any operator of an aircraft, any employee of such operator, or any person who has the authorized use of the aircraft for the purposes of its operation, other than a signatory carrier, utilizing any services, facilities, and commodities of the airports system, including, without limitation, corporate, commuter, and charter operators.

"Overseas landing" means any landing by an aircraft whose flight originated at an airport which is not situated in the State.

"Overseas terminal" means that area of HIA identified as such in the airports system terminal plan as amended from time to time.

"Passenger landing" means any landing at an airport in the airports system by an aircraft carrying principally passengers (including corporate aircraft landings).

"Retail dealer" means and includes a person who purchases liquid fuel from a licensed distributor, and sells the liquid fuel at retail. Only sales of liquid fuel for consumption or use by the purchaser, and not for resale, are sales at retail, or as otherwise defined in chapter 243, Hawaii Revised Statutes.

"Signatory carrier" means any operator of and aircraft, any employee of such operator, or any person who has the authorized use of the aircraft for the purposes of its operation, utilizing any services, facilities, and commodities of the airports system, including passenger or cargo or any combination, and which has executed and delivered a valid and binding agreement with the State providing for fees and charges payable by such operator at the entire airports system, which agreement has not terminated and is effective with respect to such operator. Such term shall not apply to operators, their employees, or other such persons having agreements applicable to only portions of the airports system.

"State" means the State of Hawaii. [Eff 8/25/94; comp NOV 13 2000] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-16.1-2 Fees and Charges. The fees and charges established by this chapter shall be applicable to all non-signatory carriers except those non-signatory carriers who qualify for exemption as established in §19-16.1-11. [Eff 8/25/94; comp NOV 13 2000] (Auth: HRS §§39-61, 261-12) (Imp: HRS §261-7)

§19-16.1-3 Airports system landing fee. There shall be imposed an airports system landing fee under this chapter for the purpose of recovering costs attributable to the airfield activity center; this fee shall be based on landings at an airport in the airports system. The airports system landing fee for an overseas landing at an airport in the airports system shall be \$2.980 per one thousand pounds of approved maximum landed weight. The airports system landing fee for an

interisland landing at an airport in the airports system shall be \$0.954 per one thousand pounds of approved maximum landed weight. [Eff 8/25/94; am 3/2/98; am and comp NOV 13 2000] (Auth: HRS §§39-61, 261-12) (Imp: HRS §261-7)

§19-16.1-4 Airports system support charge. There shall be imposed an airports system support charge under this chapter for the purpose of recovering residual costs of the airports system required in order to comply with federal and state laws by making the airports system self-sustaining; this charge shall be based on landings at an airport in the airports system. The airports system support charge for an overseas landing at an airport in the airports system shall be \$0.618 per one thousand pounds of approved maximum landed weight. The airports system support charge for an interisland landing at an airport in the airports system shall be \$0.198 per one thousand pounds of approved maximum landed weight. [Eff 8/25/94; am 3/2/98; am and comp NOV 13 2000] (Auth: HRS §§39-61, 261-12) (Imp: HRS §261-7)

§19-16.1-5 Aviation fuel tax credit. (a) There shall be credited against the amount of airports system landing fees and airports system support charges imposed by this chapter and owed for a particular calendar month, the amount of the aviation fuel taxes collected from such non-signatory carrier by a distributor of aviation fuel for the sale of such fuel within the State to such carrier during the same month; provided that, if aviation fuel is purchased by such non-signatory carrier from a retail dealer there shall be credited against the amount of airports system landing fees and airports system support charges imposed by this chapter and owed by such carrier for a calendar month an amount equal to the number of gallons purchased from the retail dealer times the applicable aviation fuel tax per gallon as prescribed in chapter 243, Hawaii Revised Statutes. The credit for aviation fuel tax shall be valid only if the retail dealer holds a permit from the state department of taxation.

(b) No credit for aviation fuel tax shall be given unless there shall be submitted within six months after the date of payment, a claim in writing by the non-signatory carrier accompanied by a statement signed by the distributor certifying: (1) to the amount of aviation fuel taxes collected, (2) that the amount of

aviation fuel taxes has been paid to the state director of taxation, and (3) that the aviation fuel taxes have not been paid either under protest by the distributor pursuant to section 40-35, Hawaii Revised Statutes, or pending determination of an appeal from the assessment of the taxes by a court of competent jurisdiction. In case the distributor has paid the aviation fuel taxes under protest or under appeal, credit shall be allowed only in the event the final decision of the cause is in favor of the State, and the amount of credit may then be taken, first as a credit against any current airports system landing fee paid, and the balance, if any, as a credit against any current airports system support charge paid.

(c) In no event shall there be a credit for any aviation fuel taxes greater than the amount paid by a non-signatory carrier in a month for airports system landing fees and airports system support charges; except, however, during any period the airports system landing fee or the airports system support charge is suspended, the aviation fuel tax collected may be credited against any other rentals, fees and charges (other than taxes, fines, penalties, or interest) payable by a non-signatory carrier to the state airports division for the use of the airports system. [Eff 8/25/94; am 10/10/98; comp **NOV 13 2000**] (Auth: HRS §261-12) (Imp: HRS §261-7)

§19-16.1-6 Charge for joint use area in the interisland terminal. The charge for use of the joint use area in the interisland terminal shall be \$69.375 per passenger landing at the interisland terminal. [Eff 8/25/94; comp **NOV 13 2000**] (Auth: HRS §§39-61, 261-12) (Imp: HRS §261-7)

§19-16.1-7 Charge for joint use area in the overseas terminal. The charge for use of joint use area in the overseas terminal shall be \$457.344 per passenger landing at the overseas terminal. [Eff 8/25/94; comp **NOV 13 2000**] (Auth: HRS §§39-61, 261-12) (Imp: HRS §261-7)

§19-16.1-8 Charge for international arrivals area.
The charge for the use of the international arrivals area shall be \$3.346 for each passenger who deplanes from an international flight and uses the international arrivals area. [Eff 8/25/94; comp NOV 13 2000] (Auth: HRS §§39-61, 261-12) (Imp: HRS §261-7)

§19-16.1-9 Reporting requirements; determinations.
(a) Non-signatory carriers shall submit a monthly report to the department containing the following aviation activity statistics for each airport in the airports system within fifteen days following the end of each month in which the aviation activity occurs:

- (1) Number of landings;
- (2) Number of passenger landings;
- (3) Number of cargo landings;
- (4) Approved maximum landed weight of the aircraft involved in each landing;
- (5) Enplaned and deplaned domestic passengers;
- (6) Enplaned and deplaned international passengers;
- (7) Any other information necessary for the calculation of non-signatory carrier fees and charges as established by this chapter; and
- (8) All other reasonable information requested by the director.

(b) Whenever a determination as to the applicability of any fees and charges is necessary under this chapter, such determination shall be made by the director based on the best available information, including reports submitted as required by this section. [Eff 8/25/94; am and comp NOV 13 2000] (Auth: HRS §§39-61, 261-12) (Imp: HRS §261-7)

§19-16.1-10 Time and place of payment. (a) The airports system landing fee and airports system support charge imposed by this chapter shall be payable immediately after a landing unless a bond is posted with the department, in which case the airports system landing fee and airports system support charge shall be payable together with the monthly reports submitted pursuant to section 19-16.1-9. Except for the airports system landing fee and the airports system support charge, all other charges shall be paid within thirty days of the end of the month in which the fee or charge was incurred.

(b) Non-signatory carriers operating in the airports system may post a cash bond or a bond by a surety company authorized to do business under the laws of the State. The bond shall be in the amount of \$10,000 for non-signatory carriers operating aircraft entirely within the State and \$50,000 for all others.

(c) Failure to pay or provide for the payment of the fees and charges imposed pursuant to this chapter shall result in an interest charge of one per cent per month, compounded monthly, until paid. In addition to interest charges, late fees payable under chapter 19-6, Hawaii Administrative Rules, shall also apply. Failure to pay or provide for the payment of the fees and charges imposed pursuant to this chapter may also result in the impoundment of the aircraft or the imposition of other penalties as permitted by law.

(d) All payments shall be made at the airports division, department of transportation, at HIA, or at any of the district offices on Maui, Hawaii, or Kauai.
[Eff 8/25/94; comp NOV 13 2000] (Auth: HRS §261-12) (Imp: HRS §§261-7, 261-7.5)

§19-16.1-11 Exemptions. This chapter shall not apply to the following types of aircraft:

- (1) Aircraft owned or operated by the:
 - (A) Government of the United States, or any agency or department thereof;
 - (B) State or any of its counties or any agency or department thereof; or
 - (C) Civil Patrol.
- (2) Aircraft with less than 12,500 pounds approved maximum landed weight using the airports system for aircraft flight training purposes, emergencies, private transportation, or test landings.
- (3) Aircraft with more than 12,500 pounds approved maximum landed weight and a maximum seating capacity of less than 20 passengers and not operating under the provisions of the Federal Aviation Regulations, 14 CFR parts 121, 125, 127 or 129, using the airports system for aircraft flight training purposes, emergencies, private transportation, or test landings.

[Eff 8/25/94; comp NOV 13 2000]
(Auth: HRS §261-12) (Imp: HRS §261-7)

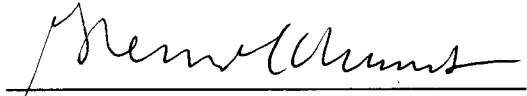
§19-16.1-12 Penalty. Penalties for violations of this chapter shall be as set forth in section 261-7, and 261-7.5, Hawaii Revised Statutes. [Eff 8/25/94; comp NOV 13 2000] (Auth: HRS §§261-7, 261-7.5) (Imp: HRS §261-21)

§19-16.1-13 Severability. If any provision of this chapter or the application thereof is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. If a particular application of any fee or charge hereunder is held invalid and provision is made for a different application of such fee or charge, such different application shall apply to all non-signatory carriers. [Eff 8/25/94; comp NOV 13 2000] (Auth: HRS §261-12) (Imp: HRS §261-12)

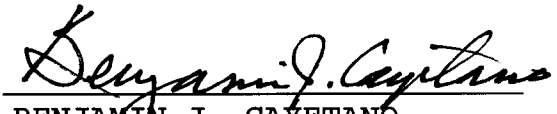
DEPARTMENT OF TRANSPORTATION

Amendments to and compilation of Chapter 19-16.1, Hawaii Administrative Rules, on the Summary Page dated October 27, 2000, were adopted on October 27, 2000, following public hearings held on October 3 and 4, 2000, after public notice was given in the statewide Hawaii State & County Public Notices on August 21, 2000.

These amendments to and compilation of Chapter 19-16.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.


KAZU HAYASHIDA
Director of Transportation

APPROVED:


BENJAMIN J. CAYETANO
Governor
State of Hawaii

Date: 11/2/2000

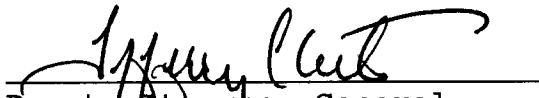
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Filed

APPROVED AS TO FORM:


Deputy Attorney General